

Order

Entered: October 5, 2004

Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2004-09

Amendment of
Rule 2.603 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 2.603 of the Michigan Court Rules is adopted, effective January 1, 2005.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.603 Default and Default Judgment

(A) Entry of Default; Notice; Effect.

- (1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.
- (2) Notice that the default has been entered ~~of the entry~~ must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.
 - (a) In the district court, the court clerk shall send the notice.
 - (b) In all other courts, the notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.
- (3) Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.

(B) Default Judgment.

(1) Notice of Request for Default Judgment.

- (a) A party ~~seeking~~ requesting a default judgment must give notice of the request ~~for judgment~~ to the defaulted party, if
 - (i) ~~if~~ the party against whom the default judgment is sought has appeared in the action;
 - (ii) ~~if~~ the request for entry of a default judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or
 - (iii) ~~if~~ the pleadings do not state a specific amount demanded.
- (b) The notice required by this subrule must be served at least 7 days before entry of the requested default judgment.
- (c) If the defaulted party has appeared, the notice may be given in the manner provided by MCR 2.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court.
- (d) If the default is entered for failure to appear for a scheduled trial, notice under this subrule is not required.

(2) Default Judgment Entered by Clerk. On request of the plaintiff supported by an affidavit as to the amount due, the clerk may sign and enter a default judgment for that amount and costs against the defendant, if

- (a) the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain;₁
- (b) the default was entered because the defendant failed to appear;₁ and
- (c) the defaulted defendant is not an infant or incompetent person.

The clerk may not enter or record a default judgment based on a note or other written evidence of indebtedness until the note or writing is filed with the clerk for cancellation, except by special order of the court.

- (3) Default Judgment Entered by Court. In all other cases, the party entitled to a default judgment by default must apply to file a motion that asks the court for to enter the default judgment.
- (a) A default judgment by default may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator, guardian ad litem, or other representative.
- (b) If, in order for the court to enter a default judgment or to carry it into effect, it is necessary to
- (i) take an account,
- (ii) determine the amount of damages,
- (iii) establish the truth of an allegation by evidence, or
- (iv) investigate any other matter,
- the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.
- (4) Notice of Entry of Default Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.
- (C) Nonmilitary Affidavit. Nonmilitary affidavits required by law must be filed before judgment is entered in actions in which the defendant has failed to appear.
- (D) Setting Aside Default or Default Judgment.
- (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.
- (2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may ~~only~~ be set aside only if the motion is filed
- (a) before entry of a default judgment, or

- (b) if a default judgment has been entered, within 21 days after the default judgment was entered.
- (3) In addition, the court may set aside ~~an entry of a default~~ and a default judgment ~~by default~~ in accordance with MCR 2.612.
- (4) An order setting aside the default or default judgment must be conditioned on the defaulted party against whom the default was taken paying the taxable costs incurred by the other party in reliance on the default or default judgment, except as prescribed in MCR 2.625(D). The order may also impose other conditions the court deems proper, including a reasonable attorney fee.
- (E) Application to Parties Other Than Plaintiff. The provisions of this rule apply whether the party entitled to the default judgment ~~by default~~ is a plaintiff or a party who pleaded a cross-claim or counterclaim. In all cases a default judgment ~~by default~~ is subject to the limitations of MCR 2.601(B).

Staff Comment: The October 5, 2004, amendment, effective January 1, 2005, of MCR 2.603 clarified some ambiguities created by the former rule's inconsistent usage of "default," "default judgment," and some related terms. See, e.g., *ISB Sales v Dave's Cakes*, 258 Mich App 520 (2003).

The staff comment is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 5, 2004

Corbin R. Davis

Clerk